

**Land Policy and Administration:
Assessment of the Current Situation and
Future Prospects in East Timor**

Final Report

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Final Report

Executive Summary

The Government of East Timor (GoET) has recognized the importance of establishing the means to resolve important land and property issues in order to more effectively facilitate economic recovery. The Indonesian occupation and violent departure have created significant problems in the land sector and emerging issues will need appropriate legislation to in order to resolve problems and create an enabling environment for recovery and investment.

The Ministry of Justice has primary responsibility for land administration and property rights policy and has identified some priorities for the development in this sector. The GoET Action Matrix, identifies a study on property issues as one important element that will serve to inform the development of policy in property rights. Ongoing dialogue between USAID and the Ministry of Justice has produced a commitment on the part of USAID to producing the terms of reference for a study on land and property rights issues. In addition USAID indicated a willingness to consider supporting implementation of the study, pending further discussion with the Ministry of Justice.

At the same time USAID has recognized the importance of security of tenure and a functioning land administration system is critical for future investment in East Timor and its long term economic development. This assessment was conducted to provide general recommendations to USAID for future action that should be considered to strengthen East Timor's capacity for clarifying property rights and developing a transparent and effective land administrative system. The assessment was also to provide general recommendations to the Government of East Timor, particularly the Ministry of Justice for future interventions which it should consider in the development of its government programs. The assessment team developed the terms of reference for the study and has submitted them as a separate report.

Apart from the terms of reference, this assessment makes several recommendations to the GoET and to USAID. To the government of East Timor we suggest that 1) the study proposed by the terms of reference be carried out so as to clarify (and quantify) issues that prevail in land and property in the country; 2) that one to three new positions be created in the Land and Property Unit for the purpose of managing and using the very large gift of GIS material being made to the Unit by the Australian government; 3) that the Ministry of Justice create a working group on land and property issues with the purpose of coordinating donors, NGOs, and government agencies; and, 4) that the government have a list of elements that will need to be put in place for a functioning land and properties administration system and capacity. These may include but are not limited to: policy and legislation, land titling and registration, dispute resolution, cadastre and taxation, national mapping requirements and

standards, valuation of properties, zoning, general land administration, and Land and Property Unit general administration.

Recommendations to USAID include: 1) that USAID/East Timor provide the funding and technical assistance to carry out the Land Tenure Research Project; 2) that short-term interventions appropriate for small grants be utilized for: development of a national cadastre, training for LPU system managers, support for the LPU GIS unit that will manage the Australian mapping data, and rehabilitation of LPU offices; 3) institutional support to the LPU covering: surveying, land valuation training, and legislative review; 4) support for regularization and registration of properties in Dili; 5) dispute resolution training for district LPU officers; and 6) support for the integration of customary administrative systems with national land policy.

I. Background

Land title and usage and property rights are insufficiently certain in East Timor to allow the country to move forward with economic recovery and revitalization. Problems arise from many factors, including the loss of records following the 1999 destruction, and overlapping and conflicting mapping and titling systems that have accrued over time from Portuguese, Indonesian and indigenous practices. Interim efforts under the UN Transitional Administration for East Timor (UNTAET) concentrated on the identification of existing government and abandoned properties, and the issuance of temporary-use leases where appropriate.

The newly established Government of East Timor (GoET) has acknowledged the importance of resolving important land and property issues. The Ministry of Justice, having primary responsibility for policy on property rights and land administration, has identified some priorities for development in this sector.

At the same time USAID has recognized the importance of security of tenure and a functioning land administration system is critical for future investment in East Timor and its long term economic development. This assessment was conducted to provide general recommendations to USAID for future action that should be considered to strengthen East Timor's capacity for clarifying property rights and developing a transparent and effective land administrative system. The assessment was also to provide general recommendations to the Government of East Timor, particularly the Ministry of Justice for future interventions which it should consider in the development of its government programs.

In the GoET Action Matrix, a study on property issues has been identified as one important element that will enable further work in this sector. As part of their dialogue and work with the Ministry of Justice, USAID made a commitment to produce the terms of reference for this study of land issues, and indicated a willingness to consider supporting implementation of the study, pending further discussion with the Ministry of Justice. The assessment team prepared these terms of reference and they have been submitted as a separate document in addition to the assessment report.

II. Assessment Approach

The assessment team met with a variety government officials, donor agencies, national and international NGO organizations, smallholder communities, and academic researchers in order to gain as comprehensive an understanding as possible of the nature of the land tenure situation in East Timor (see Appendix 1 for a list of contacts). The team also reviewed a large number of documents relating to land and property prepared by various organizations and individuals: the UN, donors, NGOs, and foreign academics (see Appendix 2 for list of documents consulted).

III. Assessment Findings

A. Background

In East Timor's transition from an occupied territory to an independent state one of the most significant issues to be confronted relates to issues of land tenure and the need to resolve conflicts and clarify rights over land and property. Because land tenure embodies the

institutional (social, political, and economic) arrangements whereby individuals and groups secure access to the productive capabilities of the land, the creation (or re-creation) of these institutions by a nation state is of highest priority.

East Timor is beginning to grapple with a wide range of complex issues related to land and property rights: the reassertion of property rights, the occupation of abandoned properties, the resettlement of internally displaced people, the return of refugees, the resolution of land disputes, the establishment of a land registration system, and the development of the security of tenure necessary to encourage domestic and foreign investments necessary for economic growth. Land and property issues have a direct impact on the social and economic security of East Timor. Disputes over the use, control, and ownership of land and property are potentially a major source of social unrest and violence given the uncertainty and insecurity over these rights.

B. Institutional framework

1. LPU

Planning documents for UNTAET included the requirement that a Land and Property Commission be established to deal with these issues. This Commission was to have two mandates: the provisional arbitration of property disputes and to administer immovable and movable public property. It was expected that this would include the development of a property registration system.

The location of land functions within government has been an evolving process. In the transition period this “Commission” gradually evolved into the Land and Property Unit within the Ministry of Justice. While at the same time other land functions were initially in the National Institute for Land Cadastre and Geodesy in the Department of Infrastructure and later were located in the Ministry of Agriculture, Fisheries, and Forests (MoAFF). Presently, cadastral functions are undertaken by the MoAFF, which is also trying to develop a self-sustaining GIS capacity, but other Ministries and agencies (Health, Mineral Resources, Planning and Finance, Transport, Communication, and Public Works) are developing their own independent GIS units because of the lack of access to the data which the MoAFF controls.

The Land and Property Unit (LPU) of the Ministry of Justice has been established to provide land and property services to East Timor. Its mission is “to design and implement sustainable, culturally appropriate institutional structures responsible for land and property matters...” Broadly speaking the LPU is responsible for most aspects of land administration for East Timor, including legislation and policy proposals, the administration of state land assets, the administration of abandoned property, land identification and survey and the establishment of a land registry, land valuation, and land taxation.

The LPU is structured into five divisions each with its own set of activities and responsibilities. In June 2001 the LPU developed a detailed strategic framework document which will guide the development of the institution. This framework document sets out the broad objectives of the Unit and the necessary projects and activities to meet those objectives. Within this context the framework document also

illustrates those activities which relate to internal institutional development and those activities for which outside funding and donor support might be necessary

Policy and Legislation addresses coordination of research and land policy studies, development of land law and regulations, and public information

- a) The terms of reference for the study on land issues has been drafted and are part of this report.
- b) There is an exhaustive amount of legislation and supporting regulations which has to be developed to support an effective land administration regime. The LPU has developed a priority list of this legislation and is in the process of beginning the drafting of those laws and regulations which are most critical. These include:
 - law regarding rental between private parties
 - law on registration
 - law on mediation
 - law regarding foreign ownership

Land Titles and Registry focuses on the design of a system of land registration and titling, the registration of government land, the registration of East Timorese land interests and the registration of foreign property claims for future decision

- a) To develop, implement, and maintain an operational land registry for the purposes of verification of rights in land and the recording of transactions in respect to those land rights is a long and complex intervention. Activities to support this would include:
 - identification of land parcels
 - verification of rights to land
 - development of administrative systems to record land claims
 - development of a system for recording transactions in rights in land
 - development of procedural manuals and internal management systems
 - training of staff to facilitate these activities.

Cadastral and Taxation is responsible for developing systems for cadastral survey and land valuation, and to propose and design a system for land taxation.

- a) Produce cadastral maps for East Timor, including detailed maps for Dili and other urban areas which can be used for parcel identification. Activities would include:
 - development of procedural guidelines for cadastral mapping,
 - staff training in survey methods including GPS technology,
 - adoption of unique parcel identification mechanisms to be utilized by the land registry and other governmental agencies.
- b) Establish and implement a program for national mapping requirements and standards.

- completion of the establishment of a national geodetic network,
 - implementation of aerial photography requirements,
 - develop a national policy for the development of a GIS database
 - coordination of a national GIS program
 - training of field surveyors in analogue and digital survey skills
 - training in air photo interpretation
 - development of procedural guidelines and manuals for mapping
 - training in ArcView GIS software
- c) A clear land valuation procedure must be put in place to allow the government to value its property for both rental as well as sale purposes. Activities to support this would include:
- development of land valuation procedures manual
 - training in land valuation

General Land Administration addresses issue of the identification of government and state land and abandoned properties, the allocation of property within government and for private use, the assessment and allocation of property for development and investment, and rental valuation and procedures.

- a) Provide East Timor with a sound program for the administration of government land. This activity would include the development of guidelines for public property management, the management of abandoned properties, the disposal of excess government properties.

Administration and Finance provides administrative services, staff development and training, finance, budget, and asset management.

- a) Develop and implement comprehensive programs for capacity building to be established and implemented in each section of the organization. This would include an overview of the existing staff development needs as well as projections for future staff expansion. Additionally, such issues as job descriptions, qualifications, performance evaluation, and promotional hierarchies will also have to be addresses. Once this program is in place discrete staff development activities can be handled by short term specialized training programs.

2. Other government agencies:

The evolution of the land administration sector will have further impact upon the Ministry of Justice as land disputes are identified and resolved. It is clear from the literature and the team's discussions that land disputes are a major threat to the security of East Timor. What is not clear is the most appropriate mechanisms for dealing with these disputes. Currently the formal judiciary has a limited capacity to handle a large number of court cases. Alternative dispute resolution methods are being introduced with limited success by a number of NGO's who are developing a capacity for mediation. However, how these settlement mechanisms are integrated into the formal

legal system, and what additional ‘local court’ efforts will be needed, will have to be developed over time.

There are a number of other government agencies which have an interest in the development of a sound land administration system for East Timor. As indicated earlier, the Ministry of Agriculture, Fisheries, and Forests currently houses the cadastral offices for the government. Because agriculture will provide the livelihood for the majority of the population, secure property rights in rural areas will be essential to support investment in agriculture with the expected increases in agricultural production and food security for the national population. The Ministry of Development and the Environment has the responsibility to coordinate investment in the country. Indications from this unit are that there is substantial interest in investment in East Timor. While security of tenure has some impact upon the level of proposed investment, a number of other pieces of legislation are also impacting upon investor interest. These include the investment code and a commercial code, which would, together, provide further assurances to potential investors.

Similarly, there are a number of land and property related areas that must develop within the government structure. These include the rural land use planning functions of government, the coordination of geographical and land information data sets, fiscal cadastres, licensing and accreditation of surveyors, valuers, real estate agents, etc.

C. Legal Framework:

The Constitution of East Timor sets out the basic premises of land and property rights. The Constitution guarantees the right to private property and restricts the ownership of property to citizens (Section 54). Reference is also made in the Constitution (Section 2) to a recognition of customary law, but only when they do not conflict with the constitution or subsequent legislation regarding customary law.

As indicated above, the LPU has a program for the development of land related legislation. It has proposed to move slowly with legislation to address those issues of least controversy first and gradually build up a constituency for further legislative initiatives. During the period of the assessment, the first piece of legislation was introduced in draft to the Parliament. This draft law dealt with the identification and management of government properties. Confusion emerged over the interpretation of the preamble to the law and the role of the preamble in the body of the law itself. This confusion was exacerbated by unauthorized translations of the law which were circulating at the time and which misinterpreted key aspects of the proposed law. Both experiences justify the need for the careful development of draft legislation and a transparent and informative process for discussion of the policy agenda.

E. Specific Land Issues:

The property rights situation in East Timor comprises sets of interrelated issues, which are difficult to separate completely. These are listed here, and addressed as well in the TOR for the Study.

- 1. Urban properties** Urban properties present a particular set of problems and issues in East Timor. The issues in the urban property sector are some of the most urgent, because this is where there are the most businesses and greatest potential for future investment and a developing property market. A predominantly large number of properties abandoned by foreign owners, and much of housing stock that was destroyed during the disruptions of 1999 where is urban areas. Specific issues include:
 - a. Occupation of former foreign owned residences.** The abandonment of a large number of residences (primarily in Dili) which were formerly occupied by Indonesian Civil Service personnel, and their subsequent occupation by East Timorese citizens, is a significant issue. Legislation will need to determine the ultimate fate of these properties, but in the meantime they provide housing to a significant percentage of the urban population. Thus, while clarifying the status of these properties is a priority, the reality of evicting large numbers of people from these properties in the near term, based on their illegal occupation, will present significant administrative, enforcement, political and social issues.
 - b. Destruction of housing stock.** Significant housing stock was destroyed in urban areas during the 1999 disruptions. UN-Habitat estimates the destruction to housing stock in East Timor to be over 50 percent, and perhaps as high as 80 percent. Because the dislocation that resulted from this destruction is related to occupation of formerly foreign-owned residences, efforts to reconcile property rights of destroyed residences, and what do to about the occupation of former foreign owned residences will need to be linked.
 - c. Returnees.** Adding to the complexity of the former two issues, is the return to urban areas of those dislocated either during the 1999 disruptions, or at some point during the Indonesian occupation. In addition, there was significant rural – urban migration that occurred after the disruption and with the arrival of the UN—although a proportion of these rural migrants are apparently returning. How this movement of people intersects with emerging legislative debate (law in parliament in Sept - Oct) regarding ‘occupation’ and ‘appropriation’ will be significant.
 - d. Property claims and dispute resolution.** Given the large destruction of property rights records regarding urban properties, the process through which people claim properties and resolve disputes will be important. Evidence is important in this regard, and policies will need to determine evidence alternatives, legitimacy, rules, availability, and access for use in urban areas.
- 2. Informal land market.** The lack of appropriate legislation dealing with property rights in East Timor does not prevent a land market from evolving and operating. However, without a legal framework the informal nature of the market breeds tenure insecurity in urban areas, discourages investment and reconstruction, and has the potential to lead to later conflicts if subsequent property rights legislation is unable to embrace what has occurred in market transactions during this informal period. The nature of this informal land market would need to be determined, as well as the mechanisms used to secure and enforce informal transactions.

- 3. Property transactions** There are a number of issues related to historic transactions in land, which need to be addressed when trying to understand and clarify current property rights. For example, there is presently an ongoing discussion of whether transactions that took place during the period of Indonesian occupation should be recognized as valid.
- a. Registered property.** While there was a limited amount of formalization and registration of rights to properties during the Portuguese period, much more registration took place during the period of Indonesian occupation. There is evidence that individuals who had acquired these formal property rights often subsequently sold these rights to others. A number of combinations of property owners were involved in these registered transactions. Transactions before 1975 would have been between East Timorese and Portuguese property holders, and between Portuguese owners, while those in the 1975 to 1999 period would have occurred between some combination of East Timorese, Indonesian, and Portuguese property owners, with some transactions apparently involving varying degrees of coercion. Those occurring in the post 1999 period may have involved a similar mix of individuals.
 - b. Unregistered property.** Additionally, there may have been transactions between property holders involving properties which were not registered, or were registered following the transaction. For example, an individual may have purchased a piece of property and subsequently had it registered to provide a more formal recognition of rights. Similarly there may have been other transactions where different forms of documentation were used and accepted with no subsequent legislation. This is a different topic than the informal land market mentioned above in that, transactions of unregistered properties over time, especially prior to independence, present particular problems to constituting a comprehensive land titling and cadastre program. These involve various mechanisms to substantiate claims to property: documents (contracts, tax receipts, etc.), local acceptance of occupation and use, historic dispute resolutions, etc.
 - c. Fate of transactions during the Indonesian occupation.** While most of the transactions during the period Indonesian occupation were between foreign property holders, presumably a number of them also involved East Timorese. The number of transactions during this period is important to determine, as well as the number that involved East Timorese as a proportion of the total number of transactions.
- 4. Tenure security.** While the link between security of tenure and investment is clear, it is less clear in the contemporary East Timorese context how various aspects of tenure security operate to constrain investment. Apart from stated policies a number of aspects of the functioning of a land tenure system serve to influence investment. The frequency and severity of disputes over property, and how these are dealt with, along with the capacity for enforcement, the role of political influence, and efficacy of the judicial system do much to influence the stable, predictable environment which investment requires. Individuals and companies will make their investment decisions based on their perceptions of tenure security: greater insecurity will mean no investment or only investments which yield high

short-term gains, while higher levels of security will lead to more investments with longer term horizons.

5. **Policy influences on the investment climate.** During the assessment the team was given conflicting information concerning the extent of interest of potential foreign investment. Initially we had been informed that a recent investor forum had been very critical of the investment climate and perceived constraints to investment. Several sources indicated that foreign investors were currently coming to the East Timor to assess the investment climate, and that they were quite interested in the development of legislation facilitating investment. One of the objectives of inventorying all government property as soon as possible is to make it available for investment.

The investment climate in East Timor will also be influenced by the government's policy on foreign ownership of property. In this regard it is important to understand what the nature and extent of East Timorese and foreign investment was prior to and during the period of Indonesian occupation. .

6. **Gender.** There is often a gender bias in the allocation of rights of access to and ownership of property. This impacts upon access to and utilization of agricultural resources in customary tenure regimes, as well as participation in a property market under more formalized tenure regimes. The ability of women to participate in decision making over land and property resources has an impact on household dynamics, family livelihoods, food security, family welfare, and investment. In this regard it is important that specific gender related issues are identified and examined.
7. **Rural Properties.** The disruptions wrought on customary communities during the Indonesian occupation and then violent departure has had significant, albeit variable, impact on the country's rural areas. In some parts of the country there appears to have been an alliance or sympathy of some communities with the independence movement, while others were more allied with pro-autonomy sentiments, with neighboring communities at times pursuing an alliance opposite that of their neighbors. Several divisive issues during the Indonesian occupation appear to have had this affect, such that any dispute resolution mechanism that may have been operable between affected communities, can now be significantly disrupted. While this effect will certainly be variable over the entirety of East Timor, the magnitude of the problem will need to be quantified, as this impacts upon the ability of the customary community at large to resolve disputes outside of state intervention. Dispute resolution institutions between local customary communities and East Timorese who were forcibly relocated, are of particular concern as these appear to be weak or non-existent in a number of cases.

The Constitution recognizes customary law provided that it does not contravene other legislation in East Timor, or norms of human rights. The Constitution also recognizes the rights of private property. The ways that customary law and private property are able to intersect, especially in dispute resolution needs to be investigated. Institutions are needed that are seen as legitimate and effective by both customary and commercial communities. This is likely to be a significant issue in peri-urban areas where urban areas are expanding into customary areas.

a. Transmigration and other relocation problems. There are generally three different categories of people that have settled on land that was otherwise the customary land of some existing community. These categories are: 1) transmigrants (Indonesians who were relocated here voluntarily during the Indonesian period); 2) East Timorese forcibly relocated from highlands during the Indonesian period, and 3) East Timorese migrants who have occupied land since 1999. The issues will vary somewhat by category. While the Indonesian transmigrants have left East Timor, there is still an issue of how to deal with land that they occupied. This is complicated by the fact that since the departure of the Indonesian transmigrants, a number of these areas have been occupied by East Timorese not originally from the communities with the customary claim to these lands. For those forcibly relocated during the Indonesian period, some over 25 years ago, the question of their claim on land is often even more complex. These East Timorese, or their descendants, may not be have access to, or wish to again relocate to land in their communities of origin.

b. Conflicts and dispute resolution. Land conflicts in rural areas of East Timor encompass a wide variety of local issues. Because all societies have conflicts over land, what is important is the derivation and legitimacy of dispute resolution institutions able to effectively adjudicate disputes, with opportunities for appeal. While there appears to be significant opportunity in East Timorese customary land tenure systems for dispute resolution within customary communities, there are problems with dispute resolution between communities, and no real mechanism for resolving disputes between customary communities and other “non-community” interests (i.e., commercial investors or others).

The utility of evidence for claims and dispute resolution deserves particular mention in the rural domain. East Timor is faced with a set of circumstances whereby different communities will possess very different sets of evidence for dispute resolution. Moreover, evidence regarded as legitimate and valuable by one community will not be available to or accepted by another community, and yet both will be presented as evidence in the same dispute, to the same institution.

c. Plantation Properties. The fate of abandoned large commercial rural properties will be a significant issue for parts of East Timor. While some of these may reside on land also claimed by customary communities, creating certain expectations, others will also be claimed by government and/or by interests operating from the formal legal system.

VI. Other Donor Activities

A number of donors other than USAID are interested in the land tenure question in East Timor. They currently provide support to activities in this sector and may provide significant funding for future activities or programs. These include:

AusAID currently provides both technical assistance and material support to a number activities directly related to land administration:

Support to the land administration office within the Land and Property Unit. This is the provision of technical assistance to aid in the training of national and district officers in aspects of land use, including land valuation, technical survey, etc. and the development of manuals for staff use. This position is currently scheduled to end at the end of 2003.

Support to the Ministry of Agriculture, Fisheries, and Forests' GIS unit. This unit has worked with a data set of existing aerial photography and land information to develop a limited GIS capacity. The second phase of support to this unit will end in late November/early December of 2002. It is the desire of AusAID that this unit operate on a cost recovery basis to provide basic climatic, topographic, and thematic maps from the existing data set. The unit will only deliver products on request rather than raw data.

AusAID is currently going through a process of developing their country strategy. This internal discussion process will coincide with the GoET's own three year strategy planning process. While AusAID was not able to make any commitments to the direction and level of their future assistance, it is anticipated that they may continue with some activities in this sector. One possible activity would be to support the development of the land registration system, including the development of the land registry. If AusAID is not going to support this activity this would one area where other donor's should consider a long-term commitment.

GTZ currently has a project for the rehabilitation of village water supplies. There is also an interest in supporting the Dili Distance Learning Center by developing materials for that training effort, including those related to land administration. GTZ has also indicated an interest in expanding their program in East Timor to include the land sector. GTZ currently is involved in a land titling program in Cambodia and have indicated an interest in developing a program in East Timor modeled on that work. GTZ will have a fact-finding mission coming in October to review situation and explore potential for project development.

CIDA is providing Can \$250,000 (Canadian dollars) in assistance to the LPU for dispute mediation. The program started in 2000, but is only getting fully under way this year. The first of four workshops will be held this November; the remainder will take place over the next 8 – 12 months. LPU will identify 21 individuals who will participate in all four workshops. These participants will be drawn from central office and district Land and Property representatives. They will then be responsible for training other LPU district representatives. The training is purely technical, and does not deal with substantive issues involving land, even though it is primarily intended for use in mediation of land disputes.

The World Bank currently is managing the East Timor Trust Fund. This fund has \$170 million, of which \$105-106 million has already been disbursed, and will end in December 2004. World Bank activities with these trust funds are focused on agriculture, education, health, and commerce. Agricultural projects are working with irrigation schemes, community empowerment projects, loans for small enterprise development projects, and agricultural policy studies.

JICA currently supports a number of activities in their priority area of agriculture and rural development. These include inputs grants, small holder credit, and soil conservation

activities. Additional support is channeled through NGO's such as funding to Yayasan Hak, CARE International, and World Vision, all of whom are dealing with integrated agriculture and rural development projects.

UNDP's work is to support the national development plan and is focused on two sectors: governance and community rehabilitation. Specific activities focus on capacity and institutional development at the Ministerial level dealing with sectoral strategies, AID coordination, security and defense, the development of the judiciary through a mentoring program for magistrates and judges, the development of the civil service and preparation of a Civil Service Act, and the organization and development of civil society through support to the NGO forum, election assistance and civic education programs.

Portugal is currently beginning a review of their country strategy programming for the next three years. At present their focus is on education, judicial capacity building, language training, and communication. There was no indication of an interest in developing a program in land related issues.

The ADB has an ongoing program in the water sector focusing on community based water management systems. They are in the process of drafting legislation for water resources, water supplies, and water sanitation in addition to developing guidelines for the water sector. Interestingly, the ADB water project is setting up water user associations with end-users of irrigation systems. In some communities, this may create some conflict in the event that current land users who invested in irrigation schemes are subsequently displaced when the conflicting land claims are resolved. Irrigated land in East Timor tends also to be the some of the most contested land. Similarly, there is evidence in some communities of conflicts between water use for agricultural purposes and urban community needs.

VII. Recommendations to the Government of East Timor

A. Terms of Reference for Study

Terms of reference have been developed for a 14-month research project that will support the longer-term policy and legislative drafting agenda of the Ministry of Justice. The complete terms of reference have been submitted as a separate report. The project is focused on intensive research and rigorous analysis of the current situation regarding land tenure and property rights in East Timor. The Land Research Project will be led by a recognized research institution that will report to the Ministry of Justice through the Land and Property Unit.

While this research will be conducted over a 14-month period (one month preparation, twelve months of research and one month for final reporting), preliminary findings from the study will be presented for discussion beginning in the third month and continuing as findings become available throughout the entire period of the project. Given the nature of land issues in Dili and the pressing need to address them to promote economic development, the project will place particular attention on the capital, and in rural areas separately.

The research required to understand the property rights situation in East Timor comprises sets of interrelated issues which will need to be addressed in a fairly

comprehensive way. While the topical designations embody important concerns, they are difficult to separate completely, and the research will need to address these in an integrative manner. A number of research topics were identified which include urban issues (destruction of housing stock, returnees, property claims and dispute resolution, informal land market); property transactions (registered and unregistered properties and the fate of transactions during various historical periods); constraints to investment (perceptions of lack of tenure security and the investment climate); gender issues; and rural property issues (population movements, conflicts and dispute resolutions, and former plantation properties.)

The study should be scientifically rigorous. The geographic scope of the study and methodologies employed will be determined by the study team once the project is underway, but it is imperative that it be designed to accurately examine the current situation throughout East Timor.

- B. Geographical Information Systems Management** The Land and Property Unit will soon become the repository for a vast wealth of data donated by the Australian government that will be of great utility to LPU and to the Government of East Timor as a whole. The LPU, however, is currently not prepared to receive nor effectively utilize this material, and will require additional staff positions to organize and set up the database management system and to manage the data. We recommend one to three staff positions be added to the LPU for this purpose. One option for achieving this is to shift at least part of the GIS Unit, which is currently housed in the Ministry of Agriculture, Fisheries, and Forests back to the Ministry of Justice and the LPU.
- C. Donor Coordination/Working Group on Land and Property Issues.** The evolution of a sound land policy and land administration framework will be a long-term process undertaken by the East Timorese government with donor support. Because this is an important issue for East Timor and will involve a variety of efforts by government agencies, donors, and NGOs, it is critical that there be coordination both within government as well as between donors supporting this process.

While the Ministry of Justice and its Land and Property Unit have the main responsibility for this activity, other organs of government have an interest in the development of this framework and should be involved in the evolution of the land policy which supports this. As the government and the Land and Property Unit finalize their strategy for this sector they should be in a position to inform donors of the government's needs for assistance and be able to negotiate with them for that assistance.

It is proposed that an interministerial committee (a "Working Group on Land and Property,") led by the Ministry of Justice and its Land and Property Unit be established to provide the East Timorese government with the opportunity to direct the role that donors and NGOs play in the land and property sector, coordinate ongoing activities, match donor and NGO interests with items that need work, and discuss important pending issues on land related activities as they develop. This committee should consist of representatives of the Ministry of Justice and other related Ministries, e.g., Agriculture, Fisheries, and Forests; Development and Environment; Transport, Communication, and Public Works; Planning and Finance;

etc., and interested donors, and NGOs working or desiring to work in the land and property sector.

When the interministerial committee is established, relevant donors should be asked to actively participate in the deliberations of the committee. In the early stages the committee should have scheduled meetings, perhaps every two months, with additional meetings as necessary. At a later stage meetings could be held less frequently, perhaps on an as needed basis, but at a minimum of at least every six months.

D. Action Plan on Development of Land Policy and Administration System

We recommend that the government have a list of elements to be put in place for a functioning land and properties administration system and capacity in East Timor. This list of elements will be of use to the Working Group on Land and Property as government, donors, and NGOs seek to participate in the development of important land and property issues. The LPU “Strategic Framework” includes many of these elements for sound administration and capacity. We concur with their strategic framework, and list many of the items from their action plan below, as well as some additional items important to the development of the lands system.

1. Policy and legislation

- Legal specialists to assist in the drafting of legislation;
- Seminars and public information campaigns at all stages of the law development process;
- Development of policy briefs and workshops for Parliamentarians.

2. Land titling and registration

- Development of administrative systems to record land claims and verify rights to land;
- Development of a system for recording transactions in rights in land;
- Development of procedural manuals and internal management systems;
- Training of staff to facilitate these activities;
- Development of public information materials and radio programs.

3. Dispute resolution

- Policy formulation for dispute resolution involving both customary and formal law and how these would interact in dispute resolution;
- Development of a capacity building program for dispute resolution personnel;
- Development of the legal framework that supports dispute resolution processes.

4. Cadastre and taxation

- Development of procedural guidelines for cadastral mapping;
- Staff training in survey methods including GPS technology;
- Adoption of unique parcel identification mechanisms to be utilized by the land registry and other governmental agencies.

5. National mapping requirements and standards

- Completion of the establishment of a national geodetic network;
- Implementation of aerial photography requirements;
- Development of a national policy for GIS database management;
- Coordination of a national GIS program between government agencies, donors, NGOs and private interests;
- Training of field surveyors in analogue and digital survey skills;
- Training in air photo interpretation;
- Development of procedural guidelines and manuals for mapping;
- Training in ArcView and/or other relevant GIS software.

6. Valuation of properties

- Development of land valuation procedures manual;
- Training in land valuation.

7. Zoning

- Examination of zoning needs;
- Training in zoning practices.

8. General Land Administration

- Identification of government land;
- Development of guidelines for public property management;
- Identification of abandoned properties;
- Development of guidelines for the management of abandoned properties;
- Development of guidelines for the disposal of excess government properties.

9. Land and Property Unit General Administration

- Administrative staff development and training;
- Training in financial management;
- Development of job descriptions and performance evaluation criteria;

- Development of office procedures manuals;
- Development of tendering and procurement procedures;
- Development of public relations capacity.

VIII. Recommendations to USAID

A. Principal Recommendation: Support the Study of Land Issues in East Timor

As outlined in Section VII, we are recommending to the Ministry of Justice that they adopt a model for their study that examines land tenure issues in East Timor over a 14 month time period. We recommend that USAID/East Timor provide the funding and technical assistance to carry out this effort through a Land Tenure Research Project.

While the timeframe for the entire project is rather short, given the nature of the assignment, it is dictated in part by the urgency of the government's legislative and land policy agenda. However, in order to ensure the development of sound policy that is widely accepted, it will be critical that the policy process is informed by this rigorous research.

The recommended project would be an intensive effort to conduct the activities outlined in the terms of reference, working in collaboration with the Land and Property Unit. The Ministry of Justice has expressed an interest in seeing the university community and other East Timorese research institutions involved in the study as well. To make use of this local capacity, we recommend that staff members of the National University or other institutions participate in the research activities. However, significant training and oversight will have to be provided in order to build capacity of local partners and to ensure the quality and timeliness of the work. It is recommended that all project partners receive training as necessary, and will work under close supervision of the Research Coordinators (positions described below).

The project would provide three long-term expatriate advisors who would be able to oversee the project and manage administrative and substantive elements of the research. While the final configuration of expatriate staff should be determined in consultation with the implementing research institution, the illustrative positions and levels of effort are described below:

Chief of Party	14 months
Responsible for overall project management; coordination of research; principal representative of project to GoET counterparts.	
Deputy Chief of Party	14 months
Responsible for administrative project management, budgetary oversight, project support to the research activity (i.e., interface with the University).	
Research Coordinator	14 months
Responsible for research design, training and managing field teams, and writing the intermediate and final research reports.	

Additional short-term advisors 7 months FTE

Brought in for short-term consultation and assignments as needed to supplement expertise of resident advisors.

The expatriate advisory team would need to be supported by a local staff, including project assistants, a secretary and translator, and drivers.

Finally, most implementation costs for the study would have to be borne by the project. This includes all travel and logistical costs (vehicle purchase or rental) for field research, publishing and translating reports, and any other costs.

B. Short-term interventions appropriate for small grants

Specific needs are required to enable the Land and Property Unit to evolve into a functioning land administration agency for East Timor. While an overall institutional development project is outlined below, three important elements should be considered in the near term under the small grant program. These elements could be combined (especially elements 2 and 3) or administered as three separate grants as determined by USAID staff.

1. Development of a national cadastre and training for LPU system managers

National cadastre systems are fundamental to the operation of a land and property systems. The cadastre is an information system consisting of two parts: a series of maps or plans showing the size and location of all land parcels together with text records that describe the attributes of the land.. Cadastres may support the recording of property rights, the taxation of land, or the recording of land use. Cadastres may also be used in a multi-purpose role to provide a wide range of land-related information. In such cases, it is best if they are constructed around the proprietary land parcel, as this is the legal basis for all dealings in land. Where ownership has not yet been proved, as may be the case where the land is being restored to former owners, such multi-purpose records can be built around the land parcel as defined by rights of use. Given that much of the interior will be defacto administered by customary systems, such a cadastre system might be in place and used when needed

Having this system functioning is a priority for East Timor. The LPU will need to develop a cadastre system along with significant training of staff for its operation. One expatriate advisor is needed for a period of six months to further this effort. This person would be charged with designing and installing the cadastre system, assessing equipment needs, and training the 15 needed LPU personnel for management of the system. These trainees would be drawn from existing LPU staff and further recruitments.

2. Support for the LPU GIS unit that will manage the Australian mapping data

The Australian Government is making a major donation to the Government of East Timor in the form of a complete set of digital aerial photographs and physical maps of the entire country. This data set, which will be transferred to

the LPU in the coming months, will be important in to the creation of a national database useful for mapping, cadastres, surveying, etc. These materials include satellite imagery, 500 copies of 1:40,000 contour maps, 50 copies of 1:5000 maps of urban areas, 50 copies of 1:1000 orthophoto maps of urban areas, and four copies of the original CD data. The LPU, however, is currently not prepared to receive nor utilize this material and will require assistance. One expatriate advisor will be needed to assist the LPU in organizing and creating the database system; assess needs and obtain hardware and software; derive procedures and policies for updating, data sharing, and otherwise managing the data; and initiate training of LPU staff in database management, maintenance, and analysis.

3. Rehabilitation of Land and Property Unit offices

The LPU is using its current facilities in Dili at maximum capacity. There is no space to house the mapping facility, let alone store the mapping and electronic data that will be coming from the Australians in the very near future. Moreover, more space will be needed as the responsibilities of the Unit grow. Most notably, the LPU will need to develop a registration facility within the next year. The LPU will be able to acquire a government building that is adjacent to their present facilities, but it needs considerable rehabilitation in order to be functional. The grant would be used to rehabilitate this building to house the cadastre office, the mapping/GIS office and storage facility, and the main registration office. Grant funding could also be used to provide any hardware or specialized storage equipment that the mapping office will require.

C. Other Longer-term Interventions

1. Institutional Development Support to LPU

The LPU has requested support for surveyor training and practical implementation of its first tranche of property work. While we would encourage USAID to provide this assistance, there are many additional areas of the LPU that also require support to enable this agency to manage the responsibilities that are being placed upon it. Therefore, we recommend that the proposed support to the surveying office be provided as one activity stream within a larger program to support the institutional development of the LPU. Elements that should be considered for this program include, but not be limited to:

a. Surveying As described in their proposal to USAID, technical training for surveying is needed to enable the LPU to move ahead with a significant survey effort, particularly in Dili. Wisely, the LPU has planned to begin the surveying effort with government properties that will involve little controversy over property rights, and surveying errors made by less experienced surveyors early in their field practicum can be easily adjusted by more experienced surveyors. This work will also establish the systems for regularizing and registering property. The assistance will require one expatriate advisor for a period of nine months to provide this training. The training needs to encompass both theoretical and practical aspects, including a significant pilot project, and on-the-job training, focused on Dili. The advisor will provide for the training of a several groups of surveyors totaling 16 people.

b. Land valuation training Land and property values are largely unknown in East Timor, having significantly changed subsequent to the departure of the Indonesian government and the associated destruction of properties. Presently no procedure exists for evaluating the value of properties. As the GoET moves forward with identifying and deciding the future of properties that were abandoned by the Indonesian government and now belong to GoET the valuation of these properties will become important. Significant revenue can be generated for the government from the sale and leasing of these properties. One expatriate staff is required for a period of approximately three months to train LPU staff in valuation of East Timorese properties, particularly in urban areas. This training would include practical, on-the-job practice.

c. Legal council and legislative review The LPU will be engaged in drafting and reviewing other office's draft legislation on property rights and land administration. In addition, the LPU must prepare and review many documents, including contracts and investment proposals. Currently, they have very weak capacity in this area. Moreover, the UN advisor to the LPU departs in December 2003, but the Unit will continue to need significant support. An advisor to the LPU, supported by East Timorese project staff, would provide mentoring and comments on legislative drafting, as well as training for LPU staff on preparing and reviewing contract and other legal documents. Short-term advisors could be brought in as necessary, though longer term support should be considered especially to follow the completion of the UN advisory position.

2. Regularization and registration of properties in Dili

The LPU has proposed to attend to the registration of government and abandoned properties as a first priority. With regularization of these properties, it seeks to establish and test the procedures and mechanisms of a land administration system. Additionally the LPU estimates that approximately 80 percent of properties in Dili are not contested. They further contend that these are the properties that should be registered and regularized first. While registering apparently uncontested properties may bring to the surface different claims, the concern is that not attending to this category of properties will allow disputes to develop. We concur that these categories of properties need to be registered and regularized, and that the LPU should be supported in this activity.

The Unit is presently putting together plans for this registration, but significant obstacles remain. The training of survey crews, the provision of equipment and material, logistical support, rehabilitation of offices, and long-term support and training for the cadastre system is fundamental needed support. AusAID has been providing limited support to the LPU and it is possible that they would undertake this activity. However, if AusAID does not do so, USAID should consider support to carry out this effort.

3. Dispute resolution training for district Land and Property Unit officers.

Disputes in rural East Timor are becoming more frequent and severe as the rural population seeks to define what lands belong to whom. At the same time

communities find that dispute resolution institutions and mechanisms are only variably available, accessible, or operable. While disputes internal to customary communities and between communities with established ways of resolution can in most cases be handled by the communities themselves, disputes between communities with no arrangements or mechanisms for resolution will need assistance from the state.

Similarly, disputes between customary communities and interests operating from formal law will also need assistance. While this does not need to involve lawyers, judges, and highly developed court systems throughout rural areas, it does need to be seen as legitimate and effective by the parties concerned, with a clear avenue for appeal.

Once the appropriate legislation for dispute resolution is adopted, the district LPU officers will need significant training for dispute resolution in line with the legislation. Training for these officers would involve a number of focused workshops on how to make the new law apply to disputes occurring in rural areas, and how to promote the legitimacy of the law and the district LPU. This project could also include legal aid/information centers and/or a public education component that seeks to increase people understanding of their rights and responsibilities under the new legislation.

4. Support for integration of customary administrative systems with National Land Policy

As East Timor moves forward with important rural land tenure issues, how customary tenure systems will intersect with formal law, and the associated opportunities for investment, transactions, formalization of boundaries, and recognition of customary laws and decisions, will come increasingly to the fore. In this regard what aspects of customary tenure are formalized in state law, and how and when this is done, will become important. Assistance will be needed for the LPU in the approaches selected and implementation of legislation regarding issues of customary law. This assistance would need to involve an advisor with experience in the interface of customary and formal tenure systems, but at intermittent periods over the next five years as the LPU moves ahead with the relevant legislation.

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